

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3777 of 1985

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SANGHVI NARENDRAKUMAR

CHHOTALAL

Versus

SIDHPUR TALUKA KHARID VECHAN SAHAKARI SANGH LIMITED  
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Appearance:

MR HB SHAH for Petitioners

MR PM RAVAL for Respondent No. 1  
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CORAM : MR.JUSTICE R.BALIA.

Date of Order: 12/12/96

ORAL ORDER

1. Heard learned advocate for the petitioner. None for the respondent. This petition is directed against the award of the Labour Court, Ahmedabad dated 30.6.194 by which the four petitioners whose services were terminated finding that retrenchment was illegal reinstated and also directed that they may be given 50% of wages as backwages for the period during which termination remained operative. It is this latter part of the award which has been challenged by the petitioners.

2. Regarding petitioners Nos. 1, 3 and 4, namely, Sanghvi Narendrakumar Chhotalal; Chauhan Hari Kishan and Shukla Vishnuprasad, it was found by the Tribunal that they had obtained licence for running a ration shop and on that basis came to the conclusion that they must be earning some amount to defray the expenditure of their livelihood. Regarding petitioner No.2 Girishkumar Laxmishanker Thakker, it was found that he is working with Sidhpur Seva Sahakari Mandli and on that premises it reached a conclusion that he was also an employee. So far as the case of petitioners Nos. 1, 2 and 4 are concerned, there is no dispute that they obtained licence for running a ration shop which is a regular activity for earning money to make both ends meet, merely because, one is outside from employment for the purpose of intervening period or until further gainful employment is obtained.

Such regular activity of gainful employment, in my opinion, furnish good ground for nor awarding full backwages. In these circumstances, so far as petitioners Nos. 1, 3 and 4 are concerned, I do not find any force in this petition.

3. So far as the cause of petitioner No.2 is concerned, it has been pointed out by the learned counsel for the petitioner from his statement before the court, Exh.18 that he has clearly stated that he is working with the Mandli as Honourary Secretary and not getting anything out of that activity. In view of the aforesaid statement, which has not been rebutted, there appears to be no evidence that petitioner No.2 was gainfully employed during the intervening period. In view of this, award of only 50% backwages in the intervening period on the ground that he was gainfully employed is based on no material. The requirement of exercise of discretion for not awarding backwages where retrenchment has been found to be illegal, ordinarily the workman has been gainfully employed as distinct from merely employed during the interrugnum period. The evidence before the Tribunal only discloses that the workman was working at the Sidhpur Seva Sahakari Mandli, but there was no evidence that such work was gainful employment. Therefore, that part of award, in my opinion is not sustainable. Accordingly this petition is partly allowed, while the claim of full backwages in respect of the petitioners Nos. 1, 3 and 4 has rightly been refused by the Labour Court, the Labour Court has apparently erred in not granting full backwages to petitioner No.2. To that extent the award of the Labour Court is modified and it is directed that petitioner No.2 shall be entitled to full backwages for the interrugnum period during which his termination remained effective. The amount of the backwages as per the aforesaid direction may be paid within a period of three months. Rule made absolute as above. No costs.